

“is . . . mentally ill . . . when the cause of action accrues, the action may be brought within the times limited herein after the disability is removed.” Id. According to the Maine Law Court, mental illness under section 853 means “an overall inability to function in society that prevents plaintiffs from protecting their legal rights.” Bowden v. Grindle, 675 A.2d 968, 971 (Me. 1996) (quoting McAfee v. Cole, 637 A.2d 463, 466 (Me. 1994)). More importantly for this case, the evidence must show that the plaintiff suffered from that degree of mental illness “when the cause of action accrue[d].” 14 M.R.S.A. § 853; Dasha v. Maine Med. Ctr., 665 A.2d 993, 994 (Me. 1995) (“Dasha does not come within the provisions of [§ 853] because he was not mentally ill when the cause of action accrued.”). Douglas, through counsel, agreed at oral argument that this means she had to meet the statutory test independently of the rapes’ effect.

Douglas asserts that at the time she was raped in 1971, she was mentally ill within the definition of the statute, and that her mental illness persisted until shortly before the filing of this lawsuit, thus tolling the statute of limitations. The defendant York County challenges that assertion in its summary judgment motion, presenting a psychiatrist’s affidavit that Douglas was not mentally ill within the meaning of the statute at the time she was raped. (Aff. of Dr. Carlyle B. Voss, Docket No. 17 (Ex. F)). As a result, Douglas has the burden to “produce specific facts, in suitable evidentiary form, to establish the presence of a trialworthy issue.” Triangle Trading Co. v. Robroy Indus., Inc., 200 F.3d 1, 2 (1st Cir. 1999) (citation and internal punctuation omitted); Fed. R. Civ. P. 56(e). Moreover, Douglas has the burden of proof on this issue, and must therefore produce

evidence sufficient to take her case to a jury. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-52 (1986). Specifically, Douglas was obliged to present evidence, in response to the motion, that would justify a jury finding that before she was raped, she suffered from a mental illness so severe that it prevented her from protecting her legal rights.

The only evidence Douglas has presented on that question is the affidavit of psychiatrist Diane H. Schetky. See Schetky Aff., Docket No. 22. It is obvious that Dr. Schetky understands the legal test involved, for she quotes the standard in her affidavit. Schetky Aff. ¶ 9. But critically, her affidavit is ambiguous concerning the functional effect of Douglas's mental health at the time of the rapes. After stating that Douglas has suffered from some form of mental illness from a young age, dating from before the rape, Dr. Schetky's ultimate conclusion concerning the degree of Douglas's mental disability independent of the rapes is enigmatic. She states,

It is also my opinion that as a result of this mental illness, **and** the exacerbation of the rapes inflicted upon her at the York County Jail, that Ms. Douglas has been at all pertinent times suffering from an "overall inability to function in society that prevents plaintiff[s] from protecting [her] legal rights."

Schetky Aff. ¶ 9 (brackets supplied) (emphasis added). A reasonable jury could not tell from Dr. Schetky's affidavit whether the psychiatrist is testifying that Douglas's "overall inability to function" preceded the "exacerbation of the rapes." The affidavit could mean that Douglas suffered the requisite degree of mental illness before the rapes (sufficient under the statute), or that her mental illness

reached that level only because of the rapes (insufficient under the statute).¹ Because Dr. Schetky's affidavit leaves the evidence, at best, in equipoise where Douglas has the burden of proof, Douglas may not proceed

I therefore do not address the underlying questions of the actual mental, physical and emotional harm Douglas suffered as a result of the rapes or her subsequent inability to bring this action. I must apply the law as the Maine Legislature has written it and the Maine Law Court has interpreted it. Due to the requirements of the statute and Maine law, Douglas's evidence does not permit her to rely on 14 M.R.S.A. § 853 to toll the statute of limitations.

It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **ADOPTED**. The defendants' motion for summary judgment is **GRANTED**.

So ORDERED.

DATED: MAY 23, 2003

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

¹ The argument was raised once, orally, that the rapes represent multiple occurrences and that although the affidavit may not support sufficient mental illness for the first encounter it may support a finding of such illness for the subsequent encounters. As this argument was never raised in the pleadings, and is not supported by Dr. Schetky's affidavit, I do not consider it.

U.S. District Court
District Of Maine (Portland)
Civil Docket For Case #: 02-CV-102

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